

REMARKS

Subject to the Examiner's entry of the amendments herein, claims 1-25 and 27-30 are pending in the application. By this Amendment Applicants have amended claims 1, 9 and 17, canceled claim 26, and added new claims 27-30, in the manner discussed below.

Double Patenting

Claim 1 has been rejected under the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 10/211,434 in view of Rajamony et al. (U.S. Patent No. 7,089,282). Upon receiving an indication that claim 1 is otherwise allowable, Applicant will file an appropriately executed terminal disclaimer to the extent the above double patenting rejection remains outstanding.

Claim Objections

Applicants have canceled claim 26 in response to the Examiner's objection to claim 26 pursuant to 37 CFR 1.75(c) as being of improper dependent form for failing to further limit the subject matter of a previous claim.

Claim Rejections Under 35 U.S.C. §101

In the above Office Action the Examiner rejected claims 1-26 under 35 U.S.C. 101 for being directed towards non-statutory subject matter. On April 5, 2007 a telephone interview was conducted with one of Applicants' representatives (Steven Tietsworth, Reg. No. 59855) to discuss the rejections under 35 U.S.C. 101. Applicants are appreciative of the time taken by the Examiner to conduct this telephonic interview.

It is the Applicants' understanding that the Examiner has deemed the arguments set forth during this interview with respect to the rejections under 35 U.S.C. 101 to be persuasive. Accordingly, Applicants respectfully request withdrawal of the outstanding rejection of claims 1-26 under 35 U.S.C. 101.

Claim Rejections Under 35 U.S.C. §102(e)

The Examiner has rejected claims 1-5, 7, 9-13, 17-22 and 25-26 under 35 U.S.C. §102(e) as being anticipated by Rajamony.

Accompanying this Amendment are declarations from each Applicant made in accordance with the provisions of 37 CFR 1.131. Each declaration demonstrates, in a manner consistent with 37 CFR 1.31 and MPEP 715, conception of Applicants' invention prior to the effective date of Rajamony and reasonable diligence from prior to such effective date until actual reduction to practice of an integrated circuit embodiment of the invention. Applicants respectfully submit that these declarations collectively overcome the above-referenced rejections of claims 1-5, 7, 9-13, 17-22 and 25-26, and respectfully request withdrawal of the same.

Claim Rejections Under 35 U.S.C. §103 Based Upon Rajamony

The Examiner has also rejected claims 6, 8, 14, 16, 23 and 24 as being unpatentable over Rajamony in view of various other references. Applicants respectfully submit that the declarations from each Applicant in accordance with 37 CFR 1.131 effectively remove Rajamony as a prior art reference. Accordingly, Applicants respectfully request withdrawal of the outstanding rejections under 35 U.S.C. §103 based upon Rajamony.

Claim Rejections Under 35 U.S.C. §103 Based Upon Jungck et al

The Examiner has rejected claims 1, 9 and 17 under 35 U.S.C. 103(a) as being unpatentable over Jungck et al in view of Heart et al.¹

Jungck System

Jungck et al describes an architecture for intercepting and processing packets from a network. The Jungck system describes two different types of processing of packets, i.e., "stateless" and "stateful". With respect to "stateful" processing, Jungck states that:

In addition, data about the packet 704 may be stored in a memory for use by other rules, for processing the current or future packets 704. This allows stateful processing, i.e., state based rules, of packets 704 as they flow through the packet analyzer 720. By storing information about past packet 704 activity that the packet analyzer 720 has processed, rules 732 may be implemented which take into account historical packet activity.

While the packet processing described by Jungck may be "stateful" in the sense of being

¹ The Examiner's rejection on p. 21 of the above Office Action explicitly rejects only claims 1 and 17, but the Examiner's subsequent remarks on pp. 23-24 indicate an intention to also reject claim 9.

based upon historical packet activity, Jungck fails to describe or suggest the existence of an association between a particular stateful protocol and a particular flow as presently claimed. Neither is Jungck's system directed to the processing of events derived from messages within flows consistent with a stateful protocol associated with such flows as presently claimed. Rather, Jungck's system is configured to address the need for "an enhanced Internet infrastructure to more efficiently deliver content from providers to users and provide additional network throughput, reliability, security and fault tolerance" [1:59-62]. As such, the Jungck system has nothing to do with the type of stateful protocol processing contemplated by the invention as presently claimed, in which there exist associations between stateful protocols and flows passing through the system and in which processing of the events of a given flow is performed consistent with its associated stateful protocol.

Because Jungck does not associate particular stateful protocols with particular flows nor process the events of message flows consistent with such protocols, Jungck also does not store flow state information characterizing a given flow as presently claimed. This is because the rules 732 stored by Jungck do not relate to stateful protocols associated with particular flows, but merely provide a generic set of instructions for processing packets intercepted from a network. Although the rules-based processing effected by the Jungck system may take into account "historical packet activity", Jungck provides no mechanism for storing a flow state corresponding to a particular flow.

Finally, Jungck does not describe, inherently or otherwise, the claimed derivation of events from messages or the retrieval of flow state information characterizing particular flows. Since flow state information for particular flows is not stored within the Jungck system, the Jungck system is not designed to obtain flow information from received messages and use such flow information to retrieve flow state information for the applicable flows as presently claimed. Because the Jungck system does not retrieve flow state information for a flow corresponding to a received message, it is unnecessary for the Jungck system to obtain flow information from received packets. Moreover, Jungck does not derive events from messages of a particular flow

nor process the derived events consistent with a stateful protocol associated with a flow as presently claimed.

The Examiner acknowledges that Jungck fails to describe either the event derivation or flow state retrieval operations recited in the pending claims, but argues that the same is impliedly (i.e., inherently) shown by Jungck:

In Column 40, lines 18-22, Jungck discloses “data about the packet may be stored in a memory for use by other rules, for processing the current or future packets. This allows stateful processing, i.e., state based rules of packets, as they flow through the packet analyzer.” This implies that events are derived and flow states are retrieved from the state information because it uses stateful processing.”

[emphasis added]

Applicant respectfully disagrees that Jungck impliedly describes either event derivation or flow state retrieval as presently claimed. As discussed above, Jungck does not describe the storing of flow states characterizing particular flows. Accordingly, Jungck does not inherently teach retrieving such flow states. Moreover, Jungck makes no mention whatsoever of the derivation of events from messages nor of the processing of such events consistent with a stateful protocol. Applicant notes that it is impermissible to conclude that certain operations are inherent to the description provided by a prior art reference if the reference would merely allow for the possibility that such operations are performed rather than necessarily require their performance. As noted in the MPEP:

The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993) (reversed rejection because inherency was based on what would result due to optimization of conditions, not what was necessarily present in the prior art); *In re Oelrich*, 666 F.2d 578, 581-82, 212 USPQ 323, 326 (CCPA 1981). “To establish inherency, the extrinsic evidence ‘must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.’ ” *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999) (citations omitted)

Since the Jungck specification effectively teaches away from event derivation (packets are described as being processed immediately following “interception”, rather than first undergoing an event derivation process), it is clear that Jungck does not necessarily require an

event derivation process. Similarly, Jungck does not necessarily require the retrieval of flow state information characterizing a particular flow because Jungck does not store flow state information of this type. Accordingly, Applicant respectfully submits that it is inappropriate under existing case law to conclude that these operations are inherently performed by the Jungck system.

Accordingly, Applicants respectfully request withdrawal of claims 1, 9 and 17 under 35 U.S.C. 103(a) as being unpatentable over Jungck et al in view of Heart et al.

New claims 28-30 are patterned after the previously pending claims, but further elaborate upon an event derivation process consistent with an embodiment of the invention.

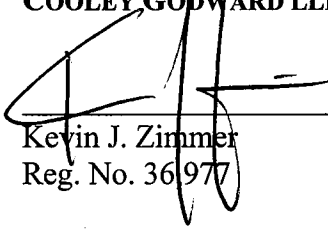
Applicant respectfully requests consideration of the remarks herein prior to further examination of the above-identified application. The undersigned would of course be available to discuss the present application with the Examiner if, in the opinion of the Examiner, such a discussion could lead to resolution of any outstanding issues.

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